

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
**ENTERED**  
TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

IN RE:

JOE GOWDY SLACK

Debtor

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Case No. 01-70753-HDH-7

JAMES D. SLACK, JR.

Plaintiff

v.

JOE GOWDY SLACK

Defendant

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Adversary No. 02-7024

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
ON FIRST AMENDED COMPLAINT TO REVOKE DISCHARGE OF DEBTOR**

**A. Findings of Fact**

1. Joe Gowdy Slack ("Debtor"), an individual, filed a voluntary Chapter 7 bankruptcy petition on August 24, 2001.
2. Debtor was granted a discharge on December 3, 2001. Prior to the granting of the discharge, no complaint was filed objecting to the Debtor's discharge.
3. James D. Slack, Jr. ("Plaintiff") is Debtor's brother and a creditor.
4. Plaintiff filed this action on December 3, 2002, seeking to revoke Debtor's discharge. With the Court's permission, Plaintiff filed his First Amended Complaint to Revoke Discharge of Debtor ("Amended Complaint") in May 2003.

5. On May 14-15, 2003, the Court conducted a trial on this adversary proceeding in Wichita Falls, Texas.
6. Debtor owns his homestead property, and has disclosed same to his Chapter 7 Trustee ("Trustee"). Approximately two years before the case was filed, Debtor conveyed an eleven-acre tract of land to his daughter. Debtor's daughter paid for that tract, and Debtor then gave her a deed shortly before the bankruptcy case was filed. This transaction is fully set out in the schedules and in information supplied to the Trustee. The homestead property was the subject of a prior adversary proceeding in this bankruptcy case, Adversary No. 01-7010.
7. Debtor is the purported executor of the Estate of Joe Donaldson Slack ("Probate Estate"), Debtor and Plaintiff's deceased father. The brothers, and their sisters, have been engaged in a long, bitter family dispute, with Plaintiff on one side, and Debtor and his two sisters on the other.
8. Information regarding the Probate Estate, and Debtor's purported role as executor, was furnished to the Trustee early in these proceedings. During the pendency of this bankruptcy case, the Trustee settled all outstanding claims and issues with the Probate Estate, by virtue of the Final Judgment entered on July 5, 2002, in another adversary proceeding filed in Debtor's bankruptcy case.<sup>1</sup>
9. The Probate Estate is not the same as the bankruptcy estate. Debtor may have owned an interest in the Probate Estate. However, he had no interest in specific assets of the

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<sup>1</sup> *Harry L. Cure, Jr., Chapter 7 Trustee, v. Wells Fargo Bank Texas, N.A., James Slack, Mary Webb, and Ceil Cleveland*, Adversary No. 02-7006.

Probate Estate.

10. Debtor furnished his tax returns for 1999 and 2000 (the last ones completed before he filed bankruptcy) to the Trustee. The returns give information on Debtor's employment income and also on a small horse operation maintained on Debtor's homestead property. In addition, Debtor's schedules and statement of affairs list information in several places concerning information about Debtor's horse operation.
11. Debtor scheduled his adjusted gross income, derived from his tax returns. However, Debtor gave the Trustee a set of tax returns which contain the complete picture of his income and expenses.
12. Shortly prior to the bankruptcy case filing, Plaintiff garnished Debtor's bank account. Jeanette Strayhorn, now Debtor's wife, set up an account in her name, with her funds. and Debtor deposited several of his paychecks into that account to pay his bills. He utilized the account for those purposes, and did not accumulate a large sum out of the reach of his creditors. At the time his case was filed, the account had only a small balance, if any, of the Debtor's funds.
13. Debtor valued his homestead and personal property from tax appraisals, and his knowledge of such properties. Debtor's testimony on the value of such property is credible. Plaintiff sought to challenge Debtor's stated property values by offering into evidence an insurance policy on Debtor's home and contents. The insurance policy describes insurance coverage, not values. Plaintiff did not offer an expert opinion on the value of Debtor's homestead and contents. Plaintiff's self-serving allegations regarding

Debtor's valuations were not credible.

14. Debtor owned two horses on the date of his petition and scheduled them. Debtor had possession of other horses belonging to his grandchildren and other members of his family, which is reasonable, given the nature of Debtor's homestead, a small ranch, and Debtor's personal interest in horses. The witnesses for the Debtor supported Debtor's claim of non-ownership of the horses, other than his two. Plaintiff's use of the records of the American Quarter Horse Association fell short because such records were shown at trial not to be evidence of true ownership.
15. Debtor owns and scheduled his yard equipment, lawn mower, and hand tools. He has not concealed such property.
16. Debtor made payments on a truck owned by his daughter and son-in-law that he uses exclusively.
17. The Debtor does not appear to have co-debtors on his obligations. A credit report offered into evidence confirms Debtor and his late father have similar names, which may be the source of some confusion on their credit reports.
18. In listing his adjusted gross income and furnishing his tax returns to the Trustee, Debtor disclosed all relevant information regarding his employment and business (horse operation) income. No credible evidence of concealment was provided to this Court.
19. Debtor's testimony at his § 341 meeting was credible.
20. Debtor's responses to the mandatory debtor questionnaire provided to the Trustee disclosed information about insurance coverage, bank accounts, litigation and

garnishments, the probate estate, transfers by the Debtor, and ownership of property. The responses substantially conform to Debtor's schedules, statement of affairs, and his testimony at the § 341 meeting. No credible evidence was offered at trial to show that Debtor's answers to the Trustee constitute fraudulent concealment and false oath.

21. Debtor valued the cash value of a life insurance policy at zero when it had a value of \$3,782.27. Debtor credibly explained at trial that he did not know the value when he did the schedules, but thought that the policy was exempt, which it is.
22. Debtor did not list savings bonds of \$450. Debtor explained credibly that he omitted them because, at the time of the filing, they could not be cashed. Debtor has since tendered the value of the bonds to the Trustee.
23. Plaintiff was apparently fully aware of Debtor's bankruptcy pleadings; Plaintiff has stated to the Court that "[p]rior to Debtor's discharge, Plaintiff relied on Debtor's sworn representations in his petition and schedules, . . ." (*See* Am. Compl. at 25.)
24. Plaintiff attended and participated in Debtor's § 341 meeting of creditors held early in the case.
25. Plaintiff had access to, and reviewed the Trustee's files in the bankruptcy case.
26. Debtor did not own undisclosed accounts receivable on the date of the petition.
27. Plaintiff was aware of Debtor's petition and schedules before Debtor's discharge, and was also aware of the following:
  - a) the extent of Debtor's property in Wichita County, Texas;
  - b) the transfer of real property by Debtor to his daughter;

- c) that Debtor claimed to be the executor of the probate estate;
  - d) that Debtor maintained a horse operation and had income and expenses associated with that business;
  - e) that Debtor leased welding equipment at one time;
  - f) that Debtor had property garnished and the amount of that garnishment;
  - g) that Debtor had been married and divorced, and the name of Debtor's former spouse; and
  - h) that Plaintiff had a judgment against Debtor, and the amount of the judgment.
28. Plaintiff offered no credible evidence that Debtor did not disclose all gifts.
29. Plaintiff offered no credible evidence that the answers by Debtor to the mandatory debtor questionnaire, (Am. Compl. at 14-27), were false or were made knowingly and fraudulently. Plaintiff did point out several relatively minor errors in the questionnaire. However, Debtor's testimony rebutted any allegations of fraudulent intent.
30. Plaintiff mistakenly construes certain property insurance information as conclusive evidence of value of Debtor's property. (*See* Am. Compl. at 15.) The insurance policy in question provides insurance coverage and is not direct evidence of value. On the other hand, Debtor relied upon the tax appraisal for his real property valuation, and on his knowledge of the personal property for its value. Debtor's testimony on value is credible.
31. Debtor did not list, in a single collective place, all bank accounts in his schedules in which he was a signatory. He omitted the Jeanette Strayhorn - Lazy Y Horse account. Debtor explained credibly the reasons for setting up that account – his brother, the

Plaintiff, had garnished his account and he needed to pay his bills. Debtor was a signatory on a probate estate account, and that information was supplied to the Trustee. Plaintiff did not show, by a preponderance of the evidence, any indicia of fraud by Debtor regarding his bank accounts. Alternatively, Debtor rebutted such claims.

32. Plaintiff has apparently combed Debtor's schedules and statement of affairs, for discrepancies, however minor, and has made every one into a claim of fraudulent conduct on the part of the Debtor. (*See* Am. Compl. at 22-25.) Many of the allegations are covered in the findings recited above. Plaintiff is simply incorrect on some of the allegations, or offered no proof. (*See, e.g.*, Am. Compl at 21 (undervaluing personal property); at 23 (gifts).) In other instances, Plaintiff did not show, by a preponderance of the evidence, any indicia of fraud by Debtor regarding his schedules and statement of affairs. Alternatively, Debtor rebutted such allegations.
33. The testimony offered by Debtor and witnesses called by the Debtor was credible on the allegations of Plaintiff.
34. The testimony of Plaintiff was, at best, unpersuasive.
35. Any conclusions of law may also be deemed a finding of fact.

**B. Conclusions of Law**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157.
2. This is a core proceeding under 28 U.S.C. § 157(b)(2)(J).
3. In this adversary proceeding, Plaintiff seeks revocation of Defendant's discharge under 11 U.S.C. § 727(d)(1) (discharge obtained through the fraud of the debtor), and 11 U.S.C.

§ 727(d)(2) (debtor acquired property of the estate, or became entitled to acquire property of the estate, and knowingly and fraudulently failed to report the acquisition or entitlement to such property, or to deliver or surrender such property to the trustee).

4. In his complaint, the Plaintiff claims that Debtor committed acts that would have prevented the granting of his discharge had such acts been proven in an objection to the granting of his discharge under 11 U.S.C. § 727(a), and that such acts constitute acts of fraud requisite to revoke the discharge under 11 U.S.C. § 727(d).
5. In an adversary proceeding to revoke discharge, the plaintiff has the burden of proving sufficient facts to sustain his claims by a preponderance of the evidence. *See Beaubouef v. Beaubouef (In re Beaubouef)*, 966 F.2d 174 (5<sup>th</sup> Cir. 1992); *cf. Grogan v. Garner*, 498 U.S. 279, 112 L.Ed.2d 755, 111 S.Ct. 654 (1991) (standard of proof in dischargeability complaints).
6. To prevail on his complaint seeking revocation of discharge under 11 U.S.C. § 727(d)(1), the Plaintiff is required to prove by a preponderance of the evidence that (1) the Defendant obtained a discharge through fraud, and (2) the Plaintiff was unaware of the fraud prior to discharge. To prove the first of these elements, the Plaintiff is required to show that (1) Defendant knowingly and fraudulently made a false oath in, or in connection with, the bankruptcy proceeding, and (2) the oath concerned a material fact. *See* 11 U.S.C. § 727(a)(4)(A).
7. Materiality is generally considered “a mixed question of law and fact, involving as it does the application of a legal standard to a particular set of facts.” *TSC Indus., Inc. v.*



*Northway, Inc.*, 426 U.S. 428, 450 (1976). See also *United States v. Gaudin*, 515 U.S. 506, 512 (1995). To be material, the subject of the oath must be such that it “bears a relationship to the bankrupt’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of property.” *Keeney v. Smith (In re Keeney)*, 227 F.3d 679, 686 (6<sup>th</sup> Cir. 2000) (quoting *In re Beaubouef*, 966 F.2d at 178; *Fogal Legware of Switzerland, Inc. v. Wills (In re Wills)*, 243 B.R. 58, 62 (9<sup>th</sup> Cir. BAP 1999); *Weiner v. Perry, Settles & Lawson, Inc. (In re Weiner)*, 208 B.R. 69, 72 (9<sup>th</sup> Cir. BAP 1997), *rev’d on other grounds*, 161 F.3d 1216 (9<sup>th</sup> Cir. 1998).

8. Plaintiff participated in the instant bankruptcy case. He attended the § 341 meeting. He had access to the Trustee’s files. He litigated with the Debtor and the Trustee. He stated, in the Amended Complaint, and in court, that he relied upon Debtor’s bankruptcy pleadings before discharge was granted. Plaintiff is Debtor’s brother and held a judgment against Debtor before the bankruptcy case. Plaintiff was aware of many aspects of Debtor’s life and business operations – far more than a regular creditor would be. Therefore, his objection to discharge under § 727(d) is untimely as to most of his allegations.
9. Plaintiff asserted many grounds in his quest to revoke the discharge granted his brother. However, after hearing the testimony of the witnesses and examining the documents offered, the Court concludes that Plaintiff has failed in the burden of proof required for discharge revocation. Plaintiff pointed out numerous technical errors made by Debtor. However, Plaintiff did not show that Debtor’s actions and mistakes were knowingly and

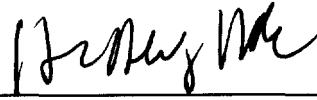
fraudulently made. In addition, the mistakes pointed out by Plaintiff were not material, either because they do not add to the Debtor's estate, or because they are not of much worth. Finally, it is notable that much of Plaintiff's case concerns facts that he had known for years. He cannot report that he relied on Debtor's bankruptcy pleadings and then, a year later, seek to revoke Debtor's discharge based on facts he has known for so long. To allow Plaintiff to rest on his rights and "lay behind the log" and then seek discharge revocation, would reward his inaction and unfairly keep the Debtor further involved in the bankruptcy case, contrary to the fresh start principle of Chapter 7.

10. The Court's conclusion as to the lack of fraudulent conduct by the Debtor is supported by several other factors. First, the Debtor completed schedules and the statement of affairs revealing his assets, liabilities, and transfers. These documents were supported and supplemented by information given to the Trustee in the questionnaire the Trustee required of the Debtor. Debtor further disclosed detailed information in his tax returns and other financial records given to the Trustee. These actions belie a finding of fraud on the part of the Debtor. He may have made several mistakes in his bankruptcy filings, but those mistakes do not rise to the level of fraud.
11. Finally, the Court makes some observations regarding the credibility of the witnesses. The Court presided over a trial which spanned almost two days. Both sides called a number of witnesses. The rule was invoked and the non-party witnesses did not hear the testimony. Debtor's witnesses told a consistent story as to Debtor's property, transactions, and accounts. They were credible. Plaintiff's version and his testimony

were, to say the least, unpersuasive. One witness, Plaintiff's own sister, called into question Plaintiff's credibility, story, and motives. Her testimony was credible.

12. For these reasons, the Court believes Plaintiff's case did not meet the burden of proof required by 11 U.S.C. § 727.
13. Any finding of fact may also be deemed a conclusion of law.

Signed this 30 day of June, 2003.



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**The Honorable Harlin D. Hale**  
**United States Bankruptcy Judge**